

**CALENDAR ITEM**

**73**

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06/18/02  
WP 7987.1  
J. Smith  
A. Scott  
C. Fossum

**SUBLEASE**

**LESSEE/SUBLESSOR:**

San Diego Unified Port District  
P.O. Box 488  
San Diego, California 92112-0488

**SUBLESSEE:**

The San Diego Mooring Company, LLC  
2040 Harbor Island Drive  
San Diego, California 92101

**AREA, LAND TYPE, AND LOCATION OF MASTER LEASE:**

108 acres, more or less, of sovereign lands in San Diego Bay, near San Diego and Coronado, San Diego County.

**AUTHORIZED USE:**

LEASE: Breakwater; Maintenance Access Road; Marine Terminal, Commercial or Industrial Uses; Anchorage/No Anchorage Areas and Mooring Basins.

PROPOSED SUBLEASE: Operation and Maintenance of Four Mooring Buoy Anchorage Areas (437 recreational vessel moorings [100 moorings on Port property; 337 moorings on state leased land]; six speed limit marker buoys; 17 boundary marker buoys; four dinghy dock landing facilities; and two dinghy beach landing areas). The lease from the Port to the San Diego Mooring Company includes both state lands leased by the Commission to the Port as well as trust lands held by the Port pursuant to a legislative grant.

**TERM:**

LEASE: 28 years, beginning July 1, 1997.

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SUBLEASE: 20 years, beginning March 1, 1999; with an option to extend for an additional period not to exceed the term of the Master Lease.

**CONSIDERATION:**

LEASE: A minimum of \$10,000 per year; or the total of the following, whichever is greater: (1) 10% of Lessee's gross income from Port operated moorings; and (2) 25% of Lessee's gross income from revenues generated by subleases on the leased premises.

SUBLEASE: A minimum of \$44,050 per year payable to the Port and: (1) 5% of sublessee's gross income from boat services and labor including boat repair, cleaning or similar services or sales of ship chandlery; and (2) 10% of sublessee's gross income from any and all other activities allowed under sublease.

**OTHER PERTINENT INFORMATION:**

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 14, California Code of Regulations, section 15301.

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.

2. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.
3. At its October 9, 1997, meeting, the Commission authorized the issuance of a consolidated lease to the San Diego Unified Port District (Port). This Lease (Lease No. PRC 7987.1) consolidated eight existing leases for various land uses as stated above. In April 1999, the Port requested that the Commission consent to a proposed lease between the Port and the San Diego Mooring Company, LLC, a California Limited Liability Company (SDMC), for operation of the Port's mooring buoy system. This system includes 437 moorings located in four separate mooring buoy anchorage areas (shown on attached Exhibit A as Shelter Island Roadstead;

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America's Cup Harbor; Laurel Street Roadstead; Bay Bridge Roadstead); and six dinghy landing facilities throughout San Diego Bay. The lease between the Port and SDMC, as amended, provides for the rental of recreational mooring buoys by SBMC to the public and the sale of mooring ground tackle, (lines and other items used to attach the boat to the buoy) by SDMC to the public.

As far back as the late 1970s, the Port has been dealing with the issues of liveaboards and derelict vessels on sovereign lands in San Diego Bay. In the 1980s, the Port prepared the "Baywide Small Craft Mooring and Anchorage Management Plan" (Plan) that established designated mooring anchorage areas. The Plan provided designated anchorage areas for small craft to increase navigational safety, protect water quality and provide low-cost moorings to the public. The Commission issued various leases in response to this Plan to assist the Port in its management of anchorages in the Bay for those mooring areas not included in sovereign lands legislatively granted to the Port. The Commission's lease to the Port requires that the lease area be maintained in a safe condition and prohibits pollution, harm to the environment and residential use of boats.

On June 9, 1998, the Port authorized the preparation of a Request for Proposals (RFP) for an Operating and Maintenance Agreement or a Lease of the mooring buoy system including those areas covered by the CSLC's lease to the Port. Nineteen proposals were received. The proposals were reviewed by a cross-departmental staff committee of the Port and were evaluated based upon services offered, reasonableness of proposed fees, experience and financial responsibility of the responders to the RFP. The committee believed that the proposal submitted by the SDMC met or exceeded all evaluation criteria while offering various additional services to boaters with little or no change in the rent currently being paid by the Port's mooring tenants and recommended that the Port negotiate and enter into a lease option with the SDMC. At its November 17, 1998, meeting, the Port approved the committee's recommendation. In December 1998, the Port approved the lease fee structure and in March 1999, the Port granted a lease to the SDMC, subject to approval by the State Lands Commission.

Since that time, issues have been raised concerning the RFP process, terms and conditions of the lease, as well as the ongoing condition and maintenance of the moorings. As a result of several complaints from the public, Commission staff directed the Port to hold a public hearing at

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which time the public would have the opportunity to comment on the procedures followed by Port's staff during the RFP process and the subsequent awarding of the lease to SDMC. The Port did so in conjunction with its November 16, 1999, Board meeting, and after hearing public comment, voted unanimously to ratify the procedures followed by the Port in issuing the RFP, and negotiating and granting the lease with the SDMC.

In February 2000, staff submitted a Calendar Item to the Commission recommending that it approve the lease between the Port and SDMC, as a sublease covering a portion of Lease PRC 7987.1 between the Port and the Commission. During consideration of this Calendar Item, members of the public representing San Diego mooring tenants again expressed concerns with the RFP process, the physical condition and safety of the mooring equipment, and the terms and conditions contained in the lease between the Port and SDMC. The mooring tenants' representatives also indicated that they felt that the public hearing conducted by the Port was ineffective and that the Port did not give sufficient consideration to their concerns before approving the lease to SDMC. The Commission directed staff to investigate these allegations and report its findings before the Commission would consider approval of the sublease between the Port and SDMC.

As directed by the Commission, staff met with representatives of the mooring tenants and the Port to clarify the issues raised and to gather information for an independent analysis of the situation. Generally the issues raised by the tenants were as follows:

1. Privatization of public moorings.
2. Lack of public notice and opportunity for input.
3. Safety of the mooring equipment.
4. Adequacy of maintenance of mooring equipment.
5. Rental Rates.
6. Violations of the RFP process.

Staff has reviewed the public records concerning this matter, met with the Port and representatives of the mooring tenants and the SDMC, attended various public meetings and conducted an engineering review of data concerning the safety of the mooring equipment. Staff offers the following analysis in response to the issues raised by the tenants:

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### Privatization of public moorings

Current mooring tenants have stated that they believe that there will be loss of a publicly owned asset if the mooring equipment installed by the Port is allowed to be operated by a private party under the proposed sublease. The Port established these mooring areas as a means of controlling unauthorized anchoring in San Diego Bay. Unauthorized anchoring was contributing to pollution within the bay and in certain areas was considered to be an interference with safe navigation. It was also an attempt to deal with abandonment of vessels in the bay. These moorings were installed and maintained by the Port, and mooring tenants were charged rent. Although the Port rental rate has been minimal, there are no provisions in the Public Trust doctrine or the Port's legislative grant that suggest or require the Port to subsidize the private recreational boater. Many other berthing facilities in the bay and throughout the state are operated by private operators and are available to the public to rent. All Port revenues are used to pay for Port operations and improve Public Trust property. Having these moorings operated on behalf of the Port by a private operator will not make them unavailable to the public. The Port believes it to be in the public's best interest for the day-to-day operation of these moorings to be managed by a private operator that could more economically operate them. The Port will continue to control the rent charged by the operator and is still responsible as a land manager to deal with consumer complaints. Additionally at the end of the sublease term the "mooring equipment" (buoy, tag chain, anchor chain, and anchor block) will be returned to the Port. The mooring tenants have expressed fear that having a private operator will cause their rent to be increased with no ability to protest. However, before any rent increase under the sublease could occur, the Port would need to approve the increase at a public meeting. Furthermore, the Commission staff's recommendation would require Commission approval of any rent modification. It is likely that rent will increase if the Port continued to operate the moorings. In fact, the Port has raised the rental rate during the past two years.

### Lack of public notice and opportunity for input

Mooring tenants indicated that they have had very little opportunity to have meaningful input to the lease process. The Commission directed staff to

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request the Port to hold public workshops to hear the concerns of the mooring tenants. The public was notified of these workshops in the following manner:

- ° Notices were mailed on January 17, 2001, to 425 persons, including mooring tenants and mooring permit applicants on the mooring waiting lists, and to 19 marinas and nine yacht clubs in San Diego Bay.
- ° Notices were posted at the dinghy landing areas and a ship chandlery (Downwind Marine) bulletin board on January 19, 2001.
- ° Verbal notification of the meetings was made during the week of January 5, 2001, to CiCi Sayer of the San Diego Mooring Tenants Association, Lisa DiMaggio of the Boaters Alliance for Recreational Concerns and Eric Leslie of the SDMC.
- ° An advertisement for the workshops was published in the *San Diego Log*, a local boating newspaper, on January 12 and 26, 2001.
- ° A Port of San Diego press release noticing the workshops was distributed to the San Diego area news media on January 25, 2001.

Three workshops were held by the Port with an independent facilitator hired to conduct the meetings. The three meetings were held on:

Saturday morning, January 27, 2001, 9:00 a.m. to 12:00 p.m.

Tuesday evening, January 30, 2001, 6:00 p.m. to 9:00 p.m.

Saturday morning, February 3, 2001, 9:00 a.m. to 12:00 p.m.

The workshops were attended by many mooring tenants and their representatives, representatives of the Port, the proposed sublessee, members of the press and a member of the Commission's staff. Each session lasted several hours and all present were encouraged to speak. The facilitator asked each individual present to make a statement or express their specific concern. Notes were made of every concern or issue regardless of whether they concerned the operation of the moorings, the RFP process or the proposed sublease. Many of the concerns with the sublease and the operations of the moorings were subsequently addressed by changes in the sublease.

The sublease that is under consideration for approval by the Commission includes amendments adopted to affect changes to the sublease based on the public input from previous requests of the mooring tenants or their representatives, the workshops, and Commission staff investigation.

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Amendment No. 4:

- Requires CSLC approval by December 31, 2001.
- Restricts uses to public mooring of recreational boats.
- Defines sale of mooring ground tackle to only parts used by tenants. Does not include buoy, anchor block, or anchor chain (these are to be supplied and maintained by SDMC).
- Requires prior approval of the Port, at a public hearing, for change in rent.
- Requires dinghy docks and beaches to be open to public access.
- Requires SDMC to purchase mooring equipment at book value. "As is" (removes \$40,000 "Port insurance" fund).
- Establishes six-month maintenance and inspection requirements for all buoys and dinghy dock.
- Includes detailed drawings of the assembled moorings.
- Establishes mooring fee schedule for the first six years.

The Board of Port Commissioners, on April 3, 2001, following a noticed public hearing at which interested members of the public were given an opportunity to be heard by the Board, voted unanimously to approve the new schedule of mooring fees, Lease Amendment No. 4 to the SDMC Lease, and authorized Port staff to submit the lease document to the CSLC for approval.

On December 11, 2001, the Board of Port Commissioners, following a noticed public hearing at which interested members of the public were given an opportunity to be heard by the Board, approved Amendment No. 5 to the SDMC Lease.

Amendment No. 5:

- Extends the date for approval of the proposed sublease by the CSLC to June 30, 2002.

Subsequent to the December 11, 2001, hearing, on March 12, 2002, the Board of Port Commissioners, following a noticed public hearing at which interested members of the public were given an opportunity to be heard by the Board, approved Amendment No. 6 to the SDMC Lease.

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Amendment No. 6, in part:

- ° Requires all steel members in the load path, excluding mooring block bail, to be replaced when they reach 80% of original design thickness.
- ° Requires the mooring anchor block to be replaced when the mooring anchor block bail reaches 50% of its original 1.25" thickness or when the bail's diameter reaches 0.626 inches.
- ° Requires all mooring buoys and associated hardware to be inspected at a minimum interval of 12 months and provides that any chain or hardware that has not been partially or completely changed out during the 12 month interval to be inspected at six (6) month intervals.
- ° Requires the SDMC to retrofit 43 mooring blocks with an additional weight sufficient to accommodate large-sized vessels that may exceed the safe holding capacity of the moorings in the event of wind speeds in excess of 42 knots (48.3 miles per hour), the design wind speed recommended by the American Boat Yacht Council.
- ° Requires a new mooring fee schedules for the first six years.
- ° Requires SDMC to provide boaters, upon issuance of a mooring permit, a map/plat/table delineating the safe mooring capacity of each mooring and provides that SDMC will color code or otherwise mark each mooring ball indicating the safe mooring capacity for the various vessels.

Subsequent to the March 12, 2002, hearing, on May 21, 2002, the Board of Port Commissioners, following a noticed public hearing at which interested members of the public were given an opportunity to be heard by the Board, approved Amendment No. 7 to the SDMC Lease.

Amendment No. 7:

- ° Extends the date for approval of the proposed sublease by the CSLC to December 31, 2002.
- ° Allows for the use of 5/8-inch mooring chain in place of 3/4-inch chain, conditioned upon the SDMC completing and submitting an engineering analysis to Port engineering staff demonstrating that



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the exact type of 5/8-inch mooring chain is safe for use on the moorings. The mooring fee schedule would be revised to reflect any decrease in material costs as a result of the use of 5/8-inch mooring chain.

Safety of mooring equipment

Mooring tenants raised issues concerning the safety of the mooring equipment, specifically the use by the Port of "China chain". The "China chain" was believed to be of lesser quality than chain manufactured in the United States. The Port has stated repeatedly that all the "China chain" has been removed from the moorings and is no longer being used by the Port. The tenants were concerned that during the past few years, several boats had broken free of their moorings and caused damage to other boats moored in the area. Tenants felt that the mooring equipment was at fault.

Engineering staff of the Commission made a site visit, with representatives of the Port, to each of the mooring locations and viewed a typical mooring configuration at each site. During this visit, the Port representatives pointed out specific moorings where the mooring tenant had not attached his/her vessel to the mooring properly and that, in the Port staff's opinion, improper tying to the mooring was the most probable cause of vessels breaking free of their moorings and not the mooring equipment itself.

Staff suggested to representatives of SDMC that they supply each mooring tenant with a detailed drawing showing the proper method of attaching a vessel to each type of mooring. The drawings could also contain specifications for the type of material that should be used by the tenants for mooring ground tackle.

The Commission's engineering staff also recommended that each individual mooring based on anchor weight and chain size be identified by color or number indicating the maximum size and type of vessel that can safely be moored at that location.

In addition, it was recommended by the Commission's engineering staff that the Port conduct an engineering evaluation to determine the maximum size and type of vessel that could be safely moored under design wind and wave conditions of a 25-year return period. The Port's engineering staff conducted such an evaluation and, based on a design wind speed of 42 knots, (a common and published [American Boat Yacht

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Council] design criteria for marinas, but less than the 25 year return period wind/wave for San Diego), identified 43 boats located in three of the four anchorage areas (America's Cup Harbor; Laurel Street Roadstead; Bay Bridge Roadstead) that presently exceed the mooring capacity. The Commission's engineering staff met with the Port to discuss the engineering calculations and have agreed to the use of the 42-knot maximum wind speed and the proposed retrofitting of the 43 moorings.

It is currently proposed that the 43 moorings will be retrofitted with an additional weight sufficient to accommodate large-sized vessels that may exceed the safe holding capacity of the current moorings in the event of wind speeds in excess of 42 knots. With the proposed retrofitting of the 43 moorings, the Commission's engineering staff concurs that the moorings will meet the design criteria for anchor weight and chain size, based on the 42-knot maximum wind speed. Commission staff recommends that, within six months of approval of the sublease, the Port and/or SDMC submit a report to the Commission on the status of the retrofitting.

Three additional public meetings were held by the Port to provide the public with information on the status of the lease with the SDMC; the results of the engineering evaluation of the moorings; and changes to the proposed mooring fee schedule. Those meetings were held on:

Saturday, January 12, 2002, 10:00 a.m. to 12:00 p.m.  
Wednesday, January 16, 2002, 4:30 p.m. to 6:30 p.m.  
Friday, January 25, 2002, 3:00 p.m. to 5:00 p.m.

The public was notified of the three public meetings and the board hearing in the following manner:

- ° A notice was mailed to each mooring tenant and person on the mooring waiting list.
- ° A notice was posted at the Port's mooring office and mooring dinghy landing areas.
- ° A notice was sent to the following newspapers: *The San Diego Log* and *The Transcript*.

Attendees at the public meetings expressed various concerns including the proposed new fee schedule and the maintenance standards being required by the CSLC.

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Maintenance of Moorings

Issues were raised by the mooring tenants concerning the maintenance practices of the Port and the apparent lack of standards for the mooring system. To address this issue, the lease between the Port and SDMC contains specific provisions regarding the future inspection and maintenance of the mooring systems to assure that the mooring equipment is kept in the best condition possible. Mooring equipment is to be removed and physically inspected at twelve-month intervals. The lease provides that any chain or hardware that has not been partially or completely changed out during the 12-month interval will be inspected at six (6) month intervals. The lease contains specifications for all parts of the mooring equipment and the minimum standards for service. The specifications for all parts of the mooring equipment from the buoy's cover and flotation, to the size, type and suitability of chain, to the weight and manufacture of the concrete anchors are detailed in the lease. Provisions of the lease between the Port and SDMC clearly identify various maintenance activities that will be required of SDMC and are in response to issues raised by the mooring tenants concerning the lack of proper maintenance of mooring equipment. The inspection criteria currently in the sublease requires that the chain be replaced when it reaches 0.4" in diameter based upon visual inspection. Pursuant to a recommendation from the Commission's engineering staff, mooring chain, and all other elements in the load path, excluding the mooring block bail, will be replaced when they reach 80% of original thickness, based upon actual measurement during inspection. SDMC is also required to maintain and repair the dinghy dock systems that provide access to the mooring system. SDMC is required to inspect these docks monthly and make repairs accordingly. The lease also specifies that SDMC must take corrective action within ten days after notice that a defect in the mooring system exists.

Rent

Mooring tenants were concerned that allowing a private operator to lease the mooring system would result in a substantial increase in rent. The mooring tenants believe that the Port had made a commitment to keep the rent for these moorings on a cost recovery basis only and that a private operator would need to make a profit from the mooring operations. There

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is no language in the Legislative grants of tide and submerged lands or the lease of trust lands from the Commission that restricts the Port from making a reasonable profit from the use of these public trust lands. Article XVI, Section 6, of the California Constitution prohibits the making of a gift of public property to any individual.

These mooring sites were established as a means of controlling the proliferation of unauthorized mooring of private vessels in San Diego Bay. As an encouragement to use these moorings the rent was initially set at a dollar-a-day. Even though this rent has been adjusted periodically, it does not appear that it ever covered the actual Port operating costs. There continues to be some dispute between the Port and the mooring tenants over the exact cost of operating the moorings. The lease between the Port and SDMC contains specific language that sets the rent for the first six years of the lease. It also does not allow an increase in the rent after the sixth year without the Port's approval. This approval must be in writing and after a public hearing before the Board of Port Commissioners. SDMC's books and financial records must support future rent increases. This process seems to answer most of the concerns of the mooring tenants and it would be consistent with procedures followed by CSLC staff for leases administered by this Commission.

Violations of the RFP

Some members of the mooring tenants group continue to believe that the Port has violated the terms of the RFP that was used in seeking an operator for the existing moorings. They assert that some of the proposals submitted through the RFP process were not properly reviewed and allege that special concessions and information was given to SDMC during the review of proposals that was not available to others, but have provided no evidence to support their position. Although the Port's staff, and that of the CSLC, agree that some procedural errors were made during the processing of the RFP, none of those errors are considered significant enough to cause the RFP process to be invalidated. Some of the mooring tenants have asked that the RFP be readvertised and that the process be redone with current information. Port staff believes that the results of readvertising the RFP would be time consuming, costly and would likely be the same.

Several of the other proposals submitted during the processing of this RFP would have required continued involvement of the Port's staff in the

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day-to-day operations of the moorings. The Port through this RFP process was seeking alternatives to the current operation, including the option of limiting their daily involvement in the mooring operations. The Port believes that the SDMC can operate these moorings more efficiently and safely than either itself or any of the other parties that submitted proposals under the RFP, thus providing the mooring tenants better service at an overall lower cost. Based on a cost analysis supplied by the Port and other cost data supplied by the mooring tenants, CSLC staff believes that the Port's costs, if it were to administer the anchorage areas, would exceed the rent proposed by SDMC under this lease.

**EXHIBITS:**

- A. Location Map
- B. Land Description

**PERMIT STREAMLINING ACT DEADLINE:**

N/A

**RECOMMENDED ACTION:**

IT IS RECOMMENDED THAT THE COMMISSION:

**CEQA FINDING:**

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15301.

**SIGNIFICANT LANDS INVENTORY FINDING:**

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

**AUTHORIZATION:**

APPROVE A SUBLEASE, AS AMENDED, FROM THE SAN DIEGO UNIFIED PORT DISTRICT TO SAN DIEGO MOORING COMPANY LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, OF A PORTION OF LEASE NO. PRC 7987.1, MORE PARTICULARLY DESCRIBED ON EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF FOR A TERM OF TWENTY (20) YEARS BEGINNING

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MARCH 1, 1999, WITH AN OPTION TO EXTEND FOR ONE ADDITIONAL PERIOD NOT TO EXTEND BEYOND JUNE 30, 2025, FOR OPERATION AND MAINTENANCE OF FOUR MOORING BUOY ANCHORAGE AREAS AND DINGHY LANDING FACILITIES, SUBJECT TO THE FOLLOWING CONDITIONS:

1. ANY CHANGES OR AMENDMENTS TO THE FEE SCHEDULE SHALL REQUIRE THE PRIOR APPROVAL OF THE COMMISSION.
2. CHANGES TO MOORING EQUIPMENT STANDARDS OR MAINTENANCE SCHEDULES SHALL REQUIRE THE PRIOR APPROVAL OF THE COMMISSION.
3. WITHIN SIX MONTHS OF APPROVAL OF THIS SUBLEASE, THE PORT AND/OR ITS SUBLESSEE WILL SUBMIT A REPORT TO THE COMMISSION DEMONSTRATING COMPLIANCE WITH THE ABOVE CONDITIONS INCLUDING A STATUS REPORT ON THE RETROFITTING OF THE MOORINGS.